IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10364 OF 2004

Mr Premchand S. Modi ... Petitioner

v/s

Mrs Shah Nafiz H. Haque ... Respondent

Mr A.N. Nasikwalla for Petitioner.

Mr S.P. Kanuga i/b Ms Poonam P. Bhosale for Respondent.

CORAM : D.K. DESHMUKH J.

DATE : 24TH AUGUST 2005.

P.C. :-

1. By this petition, the petitioner challenges an order passed by the Trial Court setting aside the ex-parte decree passed against the respondent. The respondent had filed an affidavit before the Trial Court disputing that she has signed the acknowledgment of the summons. The plaintiff - petitioner did not apply for permission to cross-examine the defendant. The Trial Court, relying on the affidavit filed by the defendant, has set aside the ex-parte decree. If according to the petitioner, the defendant was making a false statement that she has not received summons, it was for the petitioner to make an application to the Court for permission to cross-examine the defendant. In the absence of any cross-examination of the defendant, the Trial Court was justified in relying on the affidavit filed by the defendant. In any case, the result of the order impugned in the petition is that the ex-parte decree passed against the defendant is set aside and she is granted opportunity of being heard in the suit. In my opinion, granting such opportunity has not resulted in failure of justice and therefore, the petition cannot be entertained. It is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.